Department of L. R & Sett.

OFFICE of the Bd of Rev.

STATION Madras

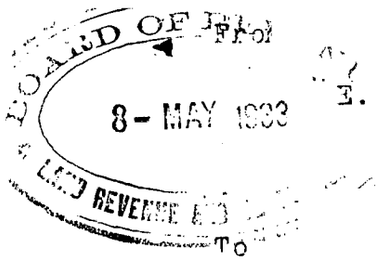
Mis No. 2063

2063

Dated 20-7-33

South Kanara Collector's Office,

Camp: Kaup, dated 4th May 1933. B 236



From

E. M. Gawne, Esq, I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Settlement

Madras.

Sir,

Assignment--Land--Udipi Taluk--Pangal village--S.No.120/6 D.C. Rules--sale by process of law--Resumption and re-entry--Re-assignment--orders requested.

In D. R. 915/1934 on the file of the Tansildar of Udipi, S. No. 120/6 of Pangal village was assigned under the Depressed Classes' rules to one Towda son of Baida. He has built a house and made some other improvements on the land, in all worth about Rs.73/-. He has also taken on 10th June 1932, a Government loan of Rs.50/- under the Land Improvement Loans Act on the security of the darkhast plot. In R.E.P. 1150/32 in S.C.No.814/31 on the file of the District Munsiff's Court, Udipi, however, the land was attached in execution of a decree obtained by one Adhikari Ramachandra Rao against the assignee. Inspite of an objection filed by the defendant and a protest sent to the District Munsiff by the District Labour Officer, South Kanara, through me a portion of the land has been sold on 20.1.33. In reply to a letter sent by me the District Munsiff stated that the sale was held only after the issue of proclamation of sale in which the objections of the District Labour Officer had been noted.

2. The rules, as they existed at the time of the grant, required among other conditions, that if the land ceased to be owned by the pattadar or his legal heirs or other members of their class owing to process of law or otherwise, the grant would be liable to be resumed by Government, who would be en-

titled to re-enter and take possession of the land. At the Court sale held as stated above, the portion of the land was purchased by one Vasudeva Rao son of the decree holder. He is not a member of the Depressed Classes and thus the grant was clearly liable to be resumed. Under instructions from the Sub Collector, Coonoor, has cancelled the assignment and ordered re-entry. This was effected on 20.4.34.

3. The question now is as to how to recover the amount of Government loan granted to the assignee. To seal the land away for the recovery of the amount or to assign it back to the debtor might both be interpreted as showing a certain contempt of the Civil Court. On the other hand the Civil Court set aside the Government when, despite the objection of the Collector that it could not give valid possession to a purchaser in Court sale, it held the sale. This is therefore a test case. If the sale is allowed to stand the conditions of assignment are not worth the paper on which they are printed.

4. I request orders whether it would be contrary to public policy to reassign the land to the original assignee, whose improvements it contains, as security for the Government loan or whether the amount should be written off the accounts as irrecoverable.

5. No. Udipi Taluk office file D.R. 915/34 is enclosed for reference.

South Kanara Collector's Office,
Mangalore. dated 22nd June 1933.

E.L. Cawne, Esq, I.C.S.,
Collector of South Kanara

To

The Secretary to the Board,
Land Revenue & Settlement,
Madras.

Sir,

Assignment--Land--Udipi Taluk--Pangal village--S. No. 12C/6--D.C. rules-sale by process of law--Resumption and re-entry--re-assigment--orders requested

I invite your attention to my Ref. A3 No. 495-33 dated 4th May 1933 and request the favour of an early communication of the orders passed by the Board in the matter

RESOLUTION. Mis No. 2063, dated 20 · 7 · 1933.

The collector is requested to re-assign the land to the original assignee under the depressed class rules and to issue a fresh loan order for rupees fifty under the L.I.L Act on the security of the Cocoa, and to ~~Act and~~ the money paid in pursuance of that order ~~should be set off~~ against the original loan, which ~~shall~~ may be liquidated once for all.

Assignment - Land - (S. Kanara) -
Pangal village - S no 120/6 - Re-
-ment - orders requested

Rs 2360/33 — Mp 1-2 cf.

A.S (L.R)

Please see the collector's letter read above. As the purchaser of a portion of the land through the court was not a member of the depressed classes, the original assignment was ordered to be cancelled and re-entry was effected on 20.4.33 The land is now at the disposal of Government. In the circumstances it is for orders whether the land may be re-assigned to the original assignee who has improved the land, as security for the loan of Rs 50/ granted to him under L.T.I Act or whether the amount may be written off the accounts as irrecoverable. If the court sale is set

held the sale inspite of protest from the collector ~~This is a test case and the legal aspect of the question may be finally answered. Mention before~~

MW 3.5.33. 2 According to para 38 (f) of BSG 15, if a land assigned to a Depressed class member under the Depressed class Conditions ceases to be owned by the assignee etc by process of law or otherwise, the grant will be liable ~~for~~ to be resumed by Govt who will be entitled to re-enter & take possession of the land without payment of any compensation This shows that as the rule stands the Govt can ~~only~~ step in & resume the land only when the land is lost to the assignee and ~~that the~~ till then the Govt cannot prevent any sale by process of law or otherwise Of course the Govt can resume the land as soon as the sale by process of law or otherwise is effected & the land is taken away from the assignee, thereby nullifying the sale by process of law the Coll. has done in this case. The Coll ~~may~~ might not have been ~~is not therefore~~ he had correct in advising the Govt ~~or himself~~ not to sell only on the ground that it had been ~~simply because the land was~~ assigned subject to the Depressed class conditi

3 The land is said to have been offered as security for a loan of Rs 50 taken by the assignee to improve the land. According to Sec 7 (1) & note 6 under the said section of the Land Improvement Loans Act, the Govt loan becomes the first charge on the land & prior mortgages are not protected as in the case of a loan under the Agl Loans Act. It is not known how the Dt Munsif sold even a portion of the land offered as security for a ~~Govt~~ loan under the L I L Act without first discharging the Govt loan which would take precedence of all encumbrances on the land. Perhaps the fact of loan was not brought to the notice of the Dt munsif. Otherwise it is not possible to understand how he could have brushed aside easily the loan under the L I L Act as he could have done with the Depressed classes loan. But now in as much as the entire land has been resumed & is at the disposal of Govt, there seems to be no need to pursue the question as to how far the Dt munsif's sale is valid. The only thing is that if the Dt munsif had not sold a portion of the land, there would have been no resumption of the land by

The CMO wants to know how the Govt loan can be recovered. He is of the opinion that to sell the land for the recovery of the loan & assign it back to the original assignee may be interpreted as Contempt of Court. Reassigning it to the original assignee may be construed as such & that too only in respect of the portion sold by the Court & not for the new portion. The Govt can assign the unsold portion to him without showing any contempt to the Court As for the selling of the land to recover the loan, it is not known how it will be taken as showing Contempt to the Court The Govt may very well recover their arrears by proceeding against the land. Now the question is whether the land can be reassigned & if not, how the Govt loan can be recovered Without offending the Civil Court, the Govt may as a matter of grace & expediency reassign the unsold portion of the land which was not sold by the Civil Court But

Civil Court calls all the Land
or a portion of such to his
prejudice of the grantee whether which
are guaranteed under the L. T. L Act
the Collr in Consultation with the
Local Govt Pleader, may move
the Civil Court to cancel the
Sale. In fact that the Land
was resumed by Govt does not
seem to stand the way of
the Cancellation of the Sale, as
at no time was it the absolute
property of the assignee. If, for
any reason the Sale cannot be
Cancelled, it seems that the
Land may be reassigned to
the original assignee as he has effected improvements thereon a
fresh loan under Rs 50/- and
to him & the money paid in
pursuance of such order may be
Set off against the Original
loan, which may be liquidated
once for all.

be taken up in appeal.

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~. The office may be

requested to report on this point-

Whether copy of the decree in SCM

814/31 on the file of the DH Corps

is not here if that are not a party to

the Suit, it is not open to them to appeal.

29-5-33

This also not known whether the time for preferring

Appeal or revision petition has expired

are concerned or interested. The Govt. of
Madras may be consulted ~~xxxx~~ in
the matter. For orders.

W
9.6.33

Opinion No.

Assignment - Land (South Kanara) - Udipitkr - Pangal village - S.No. 120/6 - Re-assignment - Opinion submitted.

Board's U.O., dated 12th June 1933.

S.No. 120/6 of Pangal village was assigned on dharkast to one Towda son of Baida under the Depressed Classes Rules. The assignee made improvements on the land to the value of Rs. 73/- and on the security of the assigned land obtained a loan of Rs.50/- from Government under the Land Improvements Loan Act. This loan is still outstanding. On 20-1-1933 the land was sold in execution of a money decree obtained by a creditor of the assignee and the purchaser is a person not belonging to the Depressed Classes. An objection to the sale was raised by the District Labour Officer but the sale was, however, held on a proclamation of sale on which the objection was noted. The assignment having been made subject to the condition that if the land ceased to be owned by the assignee, his legal heirs or a member of the depressed classes, the grant would be liable to be resumed by the Government, the land was resumed by Government on 20-4-1933.

2. The questions which are raised are :-

(a) Whether it would be contrary to public policy to reassign the land to the original assignee.

(b) Whether the Government loan should be written off.

3. From the papers before me I do not find that the Government was a party to the suit in which the execution sale took place, and indeed, it is very unlikely that it was. The parties to the suit are alone competent to raise objections to the saleability of the land. The District Munsiff was right in ignoring the objection of the District Labour Officer, though the objection having also been put forward by the judgment debtor, was noted in the proclamation of sale as a warning to intending bidders. I am of opinion that the action of the District Munsiff was quite regular.

4. But the Government is in no way injured by the court sale. Notwithstanding the sale, the Government, if it chooses to step in and resume the grant, may do so; and this has been done so that the land is now at the disposal of the Government. If it had not resumed the land, the Government would have still retained a first charge in respect of the loan. The resumption has vested the full legal title in Government. The Government is not concerned with the sale standing or being set aside. The sale having been made to a member of a non-depressed class, the condition on which the grant had been made has been fulfilled and the Government has rightly resumed the land. This condition, far from becoming infructuous, has taken effect. So that, it follows that the observation that the conditions of the assignment are not worth the paper on which they are printed, is not correct.

5. The legal title having by the resumption

vested

vested in the Government, the Government has the right to sell the land to anybody it likes, or to deal with it in any manner it pleases. It is a matter of policy - not a question of legal right whether the Government could assign the land to the original assignee. The Government must decide for itself as to how it will realise the loan. If it decides to realise the loan by selling the land to a stranger it is within its rights to do so. If, on the contrary, it decides to assign the land to the old grantee, it might do so subject either to a fresh loan ~~by~~ to the grantee to liquidate the old debt, or to a fresh security being executed by him for the total amount of the arrears. The sale by the District Munsiff did not, as it could not, affect the first charge held by the Government which continues therefore to subsist in spite of the court sale. There is no necessity to apply to the Civil Court for cancellation of the sale. The Government not having been injured by the sale, and not having been a party to the suit cannot appeal or apply for revision and it need not do so.

6. I am clearly of opinion that there is no contempt of the Civil Court involved in the Government selling away the land for the recovery of the loan or even in assigning it back to the debtor. There is no conflict in the present case between the executive and the judiciary, as each authority is properly functioning within the ambit of its respective authority. I agree that there is no impropriety in the Government realising the amount of the loan by selling the land or by having recourse to the appropriate means indicated by

Sec.

Sec.7 of the Land Improvements Loan Act (XIX of 1883). If the Government chooses the former course, it acts as an owner of property. If it chooses the latter, it acts under the special authority conferred by the Statute. It is, however, for the Government to decide whether as a matter of policy, it is expedient to reassign the land to the original grantee, which might lead to a repetition of the same evil. For, what is there to prevent the same or another creditor bringing up the property again for sale? The only way to avoid such a contingency is to make a suitable amendment of the Depressed Classes Rules by making the land not liable to attachment or sale by court. The grantee might however retain the liberty to alienate the land to a member of his own community. I may mention that the Government has an unlimited power to make grants limited by conditions unlike a private individual whose powers in this regard are curtailed by the provisions of Transfer of Property Act. The Crown Grants Act has conferred ~~xxx~~ upon the Government the fullest powers of limiting a grant both in point of duration as well as of quality.

7. My answer to question No. 1 is in the negative.

My answer to question No.2 is that the Government is at liberty to write off the amount of the loan either because it has got into its hands the security or because the loan is otherwise irrecoverable.

Madras, 27-6-1933.

Please see the V.O. remarks of the govt. Pleader, Madras at pgs. 11-14 n.f. He is of the opinion that there is no necessity to apply to the civil court for cancellation of the sales and that it is not contrary to public policy ~~or~~ contempt of the Civil court ~~in~~ to sell the leased to a stranger or re-assign ~~the land~~ it to the original assignee. ~~He~~ that course does not seem desirable. In the circumstances the suggestion of the Assistant Secretary portion marked 'B' at p7 n.f - may be approved.

~~The G.P. is also in favour of such a proposal~~

But as remarked by the G.P it is for consideration whether it is expedient to re-assign the land to the original assignee which means encouraging indebtedness on the part of the assignee. For orders

2. As the ultimate power of resumption rests with Govt, according to the conditions of assignment there seems no need to amend the B.S.O as suggested by the govt. Pleader.

In the circumstances explained by the G.P. Madras it seems that the least course is to sell the leased to a stranger preferably to the purchaser at the court-

aced credit the sale price towards the loan arrear. Orders whether the G.P. may be told so, accordingly here a copy

A-S (L-2)

Please see Assistant Secretary's query at p. 2. The land is said to have been offered as security for a loan of Rs 5C taken by the assignee to improve the land. According to section 7(1) a note is under the said section of the Land Improvements Loans Act the govt. loan become the first charge on the land and prior mortg are not protected as in the case of a loan under A.L. Act. The Ex.P is also of opinion that the first charge held by the govt continues to subsist inspite of the court's sale and that the land can be sold to a stranger for the realis of the loan. The land ~~was~~ is sold for decree on it, the loan arrear, there seems to be no objection to credit the sale account for the loan arrear.

I.W
11.7.33.

reserved because it ceases to be owned by the assignee or his legal heirs owing to sale or by process of Law or otherwise.
In this case the land was properly reserved because it ceased to be owned by the assignee If the land is sold to a person not belonging to the D-C for the realisation of his Loans arrears, the land will be reserved for the D-C & will Loan to be Eliminated from the reserved
This assignee will also be deprived of the fish of his improvements he has effected. It seems the better policy to reassign the Land to the assignee

(Supported on p. 7 n-f